



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
CITIZENS NATIONAL TRUST & SAVINGS BANK)
OF LOS ANGELES, TRUSTEE UNDER TRUST)
1411 FOR THE BENEFIT OF LESLIE G. BREHM)

Appearances:

For Appellant: W. L. Baxter

For Respondent: Harrison Harkins, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 19 of the Personal Income Tax Act (Stats. of 1935, p. 1090, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Citizens National Trust & Savings Bank of Los Angeles Trustee under Trust 1411, for the benefit of Leslie G. Brehm, to his proposed assessment of additional tax for the year ended December 31, 1935, in the amount of \$677.50.

From April 2, 1920, the date of the inception of the above-mentioned trust, to October 2, 1935, the Appellant held, as such trustee, 7,000 shares of 7% preferred stock of the Southern California Edison Company. On the latter date, the company redeemed all of the outstanding shares of this stock at a price which yielded to Appellant \$26,250 in excess of the basis of the stock held by it. On the ground that the taxation of this gain was subject to the limitations on capital gains provided by Section 7(e) of the Act, the Appellant regarded only 30% of this amount, or \$7,875.00, as taxable income.

The Commissioner, on the ground that the amount so received by Appellant was "distributed in partial liquidation," within the meaning of Section 7(g)(3) of the Act, has taken the position that the entire amount of the gain realized from the transaction is subject to the tax. The material portions of this Section provide that "amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock," and that despite the provisions of subsection (e), upon which Appellant relies, 100 per cent of the gain recognized on such transactions shall be taken into account in computing net income. Section 7(g)(9) provides that:

"As used in this subsection the term 'amount distributed in partial liquidation' means a distribution by a corporation in complete cancellation or redemption of a part of its stock, or one of a series of distributions

Appeal of Citizens National Trust & Savings Bank of Los Angeles,
Trustee Under Trust 1411 for the Benefit of Leslie G. Brehm

in complete cancellation or redemption of all
or a portion of its stock."

The Appellant contends that because the Southern California Edison Company had no intention of discontinuing business, the retirement of the preferred stock being merely a part of a plan of recapitalization, the distribution to the preferred stockholders in cancellation of their stock may not be regarded as a distribution in partial liquidation. We are unable, however, to recognize any merit in this argument. Conceding that the term "liquidation,?" as used in connection with corporate affairs, is ordinarily used to refer to the process of terminating the business of the company, in the course of which its assets are distributed to its shareholders, the essential fact remains that Section 7(g) of the Act clearly uses the term in another sense. Since the amount received by Appellant was distributed to it in "complete cancellation or redemption" of the stock held by it; we must hold that it was an "amount distributed in partial liquidation," as that term is defined by Section 7(g)(9), so that under the express language of Section 7(g)(3) it must be regarded as being "in full payment in exchange for the stock" and 100 per cent of the resulting gain must be taken into account in computing net income.

The Federal Revenue Acts have for a number of years contained the same definition of the term "amount distributed in partial liquidation" as that set forth in subsection (g)(9), and it has been uniformly held to be unnecessary, in order to bring a distribution within this definition, that the distribution be a part of a plan to liquidate the company. Commissioner v. Quackenbos, 78 F. (2d) 156; Salt Lake Hardware Co. v. Commissioner 27 B.T.A. 482; Britt v. Commissioner, 40 B.T.A. 790, affirmed in 114 F. (2d) 10.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Citizens National Trust & Savings Bank of Los Angeles, Trustee under Trust 1411, for the benefit of Leslie G. Brehm, to a proposed assessment of additional tax in the amount of \$677.50 for the year ended December 31, 1935, be and the same is hereby sustained.

Done at Sacramento, California, this 16th day of June, 1942,
by the State Board of Equalization.

R. E. Collins, -Chairman
Wm. G. Bonelli, Member
George R. Reilly, Member
Harry B. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary